

Congress of the United States
Washington, DC 20510

December 13, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator Verma:

We write on behalf of many of our constituents in Western Pennsylvania who are enrolled in the Medicare Advantage program. On June 30, 2019, University of Pittsburgh Medical Center (UPMC) providers will switch from being in-network to out-of-network for many individuals enrolled in Medicare Advantage plans offered by Highmark, Inc. (Highmark). Given the irregularity of such a significant, predetermined change in the middle of a plan year, we request information on what action the Centers for Medicare and Medicaid Services (CMS) is able to take or has taken to ensure the associated parties undertake efforts to limit beneficiary confusion. Western Pennsylvania has among the highest penetration of Medicare Advantage beneficiaries in the country, and over 100,000 seniors and people with disabilities could be impacted by this change.

As you may know, since 2011, the largest health care provider network in Western Pennsylvania, UPMC, and the largest health insurer in the area, Highmark, have been transitioning to end many of their service agreements. Notably, on June 27, 2014, UPMC, Highmark, and the Commonwealth of Pennsylvania established a consent decree stipulating that UPMC providers would maintain in-network access for Highmark Medicare Advantage enrollees for five years from the date of signing.¹ After extended legal challenges as to whether this decree would result in the unusual expiration of a major provider network contract in the middle of a Medicare Advantage plan year, the Pennsylvania Supreme Court confirmed that contracts between UPMC and Highmark for in-network Medicare Advantage access in the greater Pittsburgh and Erie areas will terminate on June 30, 2019.² Further complicating matters, on October 1st, 2018, UPMC announced that most Highmark Medicare Advantage beneficiaries would be required to pre-pay in full at certain UPMC facilities for out-of-network services starting July 1, 2019, when the consent decree between the two parties ends. This declaration adds to the unique nature of this Annual Enrollment Period.

¹ Pennsylvania Insurance Department. (2014, June 27). UPMC Consent Decree. Retrieved from http://www.insurance.pa.gov/Companies/IndustryActivity/Documents/UPMC_Consent_Decree.pdf

² Pennsylvania v. UPMC, July 18, 2018, <https://cases.justia.com/pennsylvania/supreme-court/2018-5-map-2018.pdf?ts=1531923051>

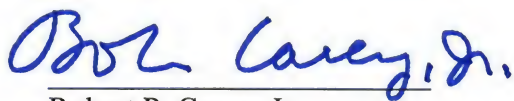
Unfortunately, we have received feedback from news reports,^{3,4} the Pennsylvania Department of Aging free health insurance counseling program (APPRISE),⁵ and constituents contacting our respective offices that this set of circumstances created significant confusion among beneficiaries during the recently concluded fall open enrollment period for plan year 2019.

Under normal circumstances, Medicare regulations prevent such confusion. The Medicare Managed Care Manual specifies that Medicare Advantage Organizations are required to include information regarding all contracted network providers at the time of enrollment of a beneficiary.⁶ Providers must also give 60-day notice of intent to terminate their network agreements.⁷ Understandably, it appears that these requirements did not contemplate a scenario where it was foreseeable from the time of open enrollment that a significant share of in-network providers would no longer participate in-network midway through the plan year.

While the fall open enrollment period concluded on December 7, Medicare Advantage beneficiaries still retain the ability to switch coverage from January 1 through March 31, 2019.⁸ In continuation of our engagement with CMS on this issue, we ask that you please provide information on what CMS may be able to do or has done to ensure that both parties have provided beneficiaries in Western Pennsylvania with the information necessary to appropriately plan for their care for the entirety of plan year 2019.

Thank you for your consideration and we look forward to your response.

Sincerely,



Robert P. Casey, Jr.
United States Senator



Patrick J. Toomey
United States Senator

³ Steve Twedt, "As open enrollment deadline nears, Pittsburgh-area seniors sort through conflicting information from insurers," Pittsburgh Post-Gazette, November 29, 2018, <https://www.post-gazette.com/business/healthcare-business/2018/11/29/UPMC-Highmark-consent-decrees-Medicare-Advantage-out-of-network-access/stories/201811280159>


⁴ David Bruce, "UPMC-Highmark consent decree impact Medicare Advantage plans," Erie Times-News, October 12, 2018, <http://www.goerie.com/news/20181012/upmc-highmark-consent-decree-impacts-medicare-advantage-plans>

⁵ Steve Twedt, "As insurers release Medicare Advantage offerings, Pittsburghers still confused about UPMC/Highmark split," Pittsburgh Post-Gazette, October 1, 2018, <https://www.post-gazette.com/business/healthcare-business/2018/10/01/Medicare-Advantage-Highmark-UPMC-Aetna-Humana-United-Healthcare-open-enrollment/stories/201810010102>

⁶ Medicare Managed Care Manual Chapter 4, 110.2.1. <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c04.pdf>

⁷ 42 CFR 422.202(d)(4)

⁸ Medicare & You, page 65, <https://www.medicare.gov/sites/default/files/2018-11/10050-Medicare-and-You.pdf>



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